IOWA STATE BOARD
OF EDUCATION
(Cite as 26 D.o.E. App. Dec. 21)

In re closing of Emerson Hough Elementary Building	)	
	)	DIA Docket No. 10 DOE 002
Jennifer Mouchka,	)	
Appellant,	)	
v.	)	
	)	**Decision**
Newton Community School District,	)	
Appellee	)	
	)	(DE Admin. Docket No. 4712)

Procedural History

On March 22, 2010 the Board of Directors of the Newton Community School District approved motions to close one of the district's five elementary attendance centers, realign its elementary structure into two upper elementary and two lower elementary attendance centers, and to revise attendance center boundaries. The motions included a decision to discontinue use of the Emerson Hough Elementary School as an attendance center.

This appeal was initiated pursuant to Iowa Code section 290.1, which allows the parent of an affected student who is aggrieved by a decision or order of the board of directors of a school corporation to appeal the decision to the state board of education. The undersigned Administrative Law Judge from the Iowa Department of Inspections and Appeals Administrative Hearings Division has been designated to serve as presiding officer for the hearing.

In her appeal affidavit, Appellant Jennifer Mouchka contends that the Newton School Board abused its decision in voting to close Emerson Hough Elementary School, asserting that the decision is not supported by substantial evidence, is contrary to Newton Board policies, and is arbitrary and capricious. By Scheduling Order issued on June 3, 2010, hearing on the appeal was set for August 26 and 27, 2010 and prehearing deadlines were established.

On June 21, 2010, the Appellant filed a *Request for Judicial Viewing and Additional Hearing Time to Accommodate Viewing*, stating a belief that it would be highly

informative to the Administrative Law Judge to have the opportunity to view Emerson Hough Elementary School and Woodrow Wilson Elementary School. The District filed a response to the request for viewing on June 25, 2010, acknowledging that the presiding officer has discretion to grant the request and asking that ruling upon the motion be deferred until after consideration of a summary judgment motion the District intended to file. A reply to the response reasserting the request for viewing was filed by the Appellant on July 1, 2010.

On July 16, 2010, the District timely filed a *Motion for Summary Judgment*, Statement of Undisputed Material Facts with a supporting appendix, and Memorandum of Authorities in support of the motion. The Appellant timely filed a Resistance to the Motion, Statement of Disputed Material Facts with supporting affidavit, Statement of Further Disputed Facts with attached supporting documentation, and a Memorandum of Authorities in resistance to the motion. The District filed a Reply to the Appellant's resistance was on August 6, 2010.

Ruling on Motion for Summary Judgment

Summary judgment may be entered if the pleadings, submitted discovery, and affidavits show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3)

The allegations set forth within the Statement of Undisputed Material Facts submitted by the Newton Community School District are largely uncontested by the Appellant. Many of the allegations contained within the Statement of Further Disputed Material Facts filed by the Appellant, are also undisputed in that they are consistent with the School District's statement of facts, were not disputed by the District in its reply memorandum, or are supported by the documentation submitted by the Appellant. The following statements of undisputed and disputed facts are derived from the filings of both parties.

Undisputed facts: The Newton Community School District, hereinafter the District, has experienced consistent declining enrollment for many years. Over the past 11 years the District's certified enrollment has fallen by 417 students, going from 3,619 in the 1998-99 school year to 3,202 in the 2009-10 school year. District enrollment declined by 65 students between the two most recent years, 2008-09 and 2009-10. This one year enrollment decline resulted in a reduction of $374,920 in state aid. The trend in declining enrollment is projected to continue.

The District has been operating 1 high school, 1 alternative high school, 1 middle school, and 5 elementary schools – or attendance centers. In January of 2009 the District began a neighborhood boundary and realignment study of the elementary schools. The study was conducted by a 30-member District Improvement Team composed of school administrators, teachers, students, and parents. Through the year the Board of Directors of the District, hereinafter Board, was updated by the Superintendent about progress of the study, including the District Improvement Team's collection of

enrollment and financial information and community input and discussion and review of existing facilities.

The District Improvement Team prepared a report of its study which was presented to the Board on November 23, 2009. The report, entitled "Elementary School Boundaries & Alignment Study," included a basic facility inventory for each elementary school, utility expense information for each elementary school, and a compilation of survey responses submitted by team members after tours of each elementary school. The Emerson Hough and Woodrow Wilson facility inventories were as follows:

	Emerson Hough	Woodrow Wilson
1st floor classrooms	11	14
2nd floor classrooms	7 (with elevator)	4
Gym & Lunchroom	Separate	Together & small
Media center	Excellent	Excellent
Playground	Great space, equipment (fort) needs updating	Nice equipment, limited green space
Technology access	Adequate	Adequate
Location	East central	SW

Several of the comments by team members on the survey were critical of the layout and accessibility of the Woodrow Wilson building. Two of the survey questions asked team members to rank the 5 elementary facilities. The compiled results to these question rated Emerson Hough 3rd of the 5 elementary schools and Woodrow Wilson last in terms of "overall functionality" and "overall appearance."

The District Improvement Team report described the various school structure alternatives examined by the team:

1. maintain current school structure – reduce sections and mandate student transfers as needed,
2. district divided into two halves each with a primary school and intermediate school – the 5th school building would house an Early Childhood Center for all 4 and 5 year olds in the district,
3. district divided into two halves each with primary school and an intermediate school - all district 5th and 6th graders would be housed at the current Berg Elementary School, and
4. 100% grade-like centers (example – all 4th graders in district would attend the same school); and addressed the pros and cons identified by the team for each alternative. The report identified one additional alternative: (5) divide district into two halves each with a primary school and an intermediate school – the 5th school building would house Basics & Beyond Alternative High School, central office staff, and the Four Oaks Program.

The Team also noted that another alternative might not yet have been discovered. A listing of the identified pros and cons of each alternative was included. The report concluded that alternative (4) was "not feasible" and that alternative (3) was of "uncertain feasibility" because there was not enough room on the Berg Elementary side. The report did not make recommendation as to which of the remaining alternatives the District should pursue.

At the next regular meeting of the Board, held on December 7, 2009, the Board appointed 3 of its members (Sherri Benson, Don Poynter and Darrin Hamilton) to serve on a Board subcommittee to continue the Elementary Boundary and Alignment Study. The intended function of the subcommittee, as described in an informational flyer distributed to patrons of the district, was "to advance the study, share information with the public, gather public input, and ultimately develop a recommendation for the Board's consideration." A timeline and processes for the study were established by the District.

During the months of December and January the subcommittee held a number of work sessions during which the subcommittee members reviewed the District's financial status, analyzed data, and planned the format for the distribution of public information and conduct of meetings. They discussed decision-making timelines, public meeting calendars, and decision-making processes.

The persistent decline in enrollment coupled with the significant budget cuts from the state level created an urgency to consider adjustments to the District's current school structure. The Governor had ordered a 10% across-the-board state budget reduction in October of 2009. This reduction resulted in a reduction of $1,527,733 in state funding for the Newton District. The District's total cost reduction goal, a range of $2,250,000 to $2,500,000, contemplated a continued decline in enrollment, based on state enrollment projections, along with another statewide cut. The District looked to the potential closing of an elementary school, staff reductions, other maintenance and operation cost reductions, and the use of cash reserve funds as measures to balance the budget.

An informational flyer sent by the District to all postal customers at the beginning of February informed District residents of the revenue decline, cost reduction goal, and the potential cost reductions from the various school realignment alternatives. The flyer also identified other District cost reduction measures, including: reductions or terminations of multiple positions and programs at a district level, Newton Senior High School, and Berg Middle School – which had a cost reduction target of $700,000 to $1,000,000 dependent upon the total number of cuts. The public was invited to review the information and provide input by e-mail or by attending one of the series of public meetings scheduled at the elementary schools.

During February, members of the subcommittee attended the public meetings, invited the public to participate in a bus tour of all of the elementary buildings on a Saturday morning; met with the elementary school principals; and used direct mail, e-mail, and

newspaper coverage to invite and receive pubic input and address concerns. Members of the public, teachers, and school staff attended each of the public meetings. Detailed minutes from the meetings at the elementary schools show that each began with the presentation of the data on declining enrollment and state aid and potential methods to reduce expenditures, including the possibility of closing an elementary school. At each location, the presentation was followed by a question and answer session.

On February 22, 2010, the full Board held a work session focused on the budget and elementary realignment. After receiving an overview of the position of the budget and progress of the realignment study from Superintendent Steve McDermott, the Board scheduled a public forum to be held on February 26, 2010 at the high school. At this public forum, Emerson Hough Elementary and Woodrow Wilson Elementary were named as the two most likely schools to be considered for closure, given the location and size capacities of all 5 schools. March 22nd was announced as the date when a realignment decision would be considered.

At the regular school board meeting on March 8, 2010, board members discussed their individual feelings on the boundary and realignment study process, the forums, and community input, as well as their positions on the question of closing a school and realigning boundaries. On March 15th, the Board held a special meeting to schedule a public hearing on the elementary school boundary and realignment decision for March 22nd. The Board held a work session on March 17th at which presentations were given regarding student transportation, student location, bus route development, school boundaries development, and the benefits of elementary school grade realignment.

The Woodrow Wilson and Emerson Hough buildings were two oldest elementary buildings in the district. Each had been expanded and remodeled or renovated several times. The following building history information was submitted by the Appellant.

Emerson Hough – 65,758 Sq. Ft.
- 1901 Old Emerson Hough building – 30,930 Sq. Ft.
- 1926 New Emerson Hough building
- 1974 Addition two classrooms – 2,328 Sq. Ft.
- 1994 Addition/renovation – 32,500 Sq. Ft.

Woodrow Wilson – 40,160 Sq. Ft.
- 1926 Original building (first floor) – 8,760 Sq. Ft.
- 1931 Addition (second floor)
- 1956 Addition
- 1988 Addition – 7,590 Sq. Ft.
- 2005 Addition – 12,660 Sq. Ft.

As of March 1, 2010, 313 students were enrolled at Woodrow Wilson and 268 at Emerson Hough.

The range of potential cost savings from the closing one elementary school was estimated as $712,000 to $770,000, depending upon which school was closed. The cost reduction associated with the closure of Emerson Hough Elementary School was estimated at $770,000. The estimated cost reduction if Woodrow Wilson was closed was $712,000. The same estimate of savings from staff reduction ($569,000) was projected regardless of which building closed. The variation in savings arises because Emerson Hough had higher annual utility ($103,000 v. $65,000), maintenance ($75,000 v. $56,000), and food service ($23,000 v. $22,000) expenses.

The boundary and alignment subcommittee convened after the Board meeting on March 17th to discuss the recommendation to be made to the Board. Two of the subcommittee members had concluded that the District needed to close a building, the remaining member remained undecided on the question of closing a building. If a building was to be closed, all subcommittee members agreed this should happen in the fall of 2010 and that a PK-3, 4-6 grade alignment was the best structure to implement. Two subcommittee members stated they believed Woodrow Wilson Elementary was the facility to close and the third member stated he thought Emerson Hough Elementary should be closed.

The March 22, 2010 Board meeting began with a public hearing on the elementary boundary and realignment issue. After the public hearing was closed, the Board received the recommendation of its subcommittee – 2 of the 3 recommending closing a building and all agreeing that if a building was closed, the decision should be effective for the 2010-2011 school year and the new grade structure should be two PK-3rd grade centers and two 4th-6th grade centers with one of each on the east and west sides of the district. Superintendent McDermott also recommended that one school building should be closed and a PK-3 / 4-6 realignment put into place for the 2010-2011 school year.

The Board then took action through a series of motions:

1. Motion that the Newton District changes from 5 elementary attendance centers to 4 elementary attendance centers beginning with the 2010-2011 school year, with the building no longer being utilized as an elementary attendance center, either Woodrow Wilson or Emerson Hough, being kept operational for another re-use.
   Passed: 7 – 0

2. Motion for the Board Secretary to call the role with each board member stating either Woodrow Wilson or Emerson Hough as the building that would be utilized as an elementary attendance center and the other would be kept operational for another re-use.
   Woodrow Wilson: 4 Emerson Hough: 3 (building to remain open as school)

3. Motion to keep Woodrow Wilson open as an elementary attendance center and keep Emerson Hough operational for another purpose to be decided at a later time.
   Passed: 5 – 2

4. Motion that the Newton District changes from its current elementary structure to having two upper elementary and two lower elementary buildings with a district boundary line running north/south and a set of upper/lower on both the east and west of the district.
   Passed: 5 – 2

5. Motion that the previous motion which was approved will be further clarified with the lower consisting of PK-3 grades and the upper consisting of 4-6 grades.
   Passed: 6 – 1

On May 10, 2010, the *Newton Daily News* published an article in which Board President Dennis Combs outlined the reasoning which led him to vote to close Emerson Hough Elementary School. Mr. Combs prefaced the entire discussion by stating: "Unless otherwise noted, I am speaking only for myself." He then outlined the top four factors which led him to his decision:

1. student population - lowest at Woodrow Wilson, with a growing discrepancy compared to the Emerson Hough area;
2. building condition/learning environment - of 5 elementary facilities, he rated Emerson Hough 2nd and Woodrow Wilson 3rd;
3. location - considering transportation challenges and enrollment trends, he rated Woodrow Wilson 2nd of 5 and Emerson Hough 3rd; and
4. potential reuse of building - configuration of facility led him to rank Woodrow Wilson 4th of 5 and Emerson Hough 2nd of 5 on this criteria.

The Newton School Board Policies include a Code of Ethics (item 202.1), which includes the following statements:

> As a school Board member . . . I will be motivated only by an earnest desire to serve my district and the children of my district in the best possible way. I will not use the schools or any part of the school program for my own personal advantage or for the advantage of my friends or supporters.
>
> In meeting my responsibility to my community . . . I will consider myself a trustee of public education and will do my best to protect it, conserve it, and advance it, giving to the children of my community the educational facilities that are as complete and adequate as it is possible to provide. I will represent the entire district rather than individual electors, patrons, or groups.

The Appellant asserts that 3 of the 4 Newton Board members who initially voted to close Emerson Hough "have a direct connection" to Woodrow Wilson. Board President Dennis Combs' children previously attended Woodrow Wilson, member Andrew Elbert is past President of the Woodrow Wilson PTA, and Board member Joe Klingensmith is current Vice President of the Woodrow Wilson PTA. The PTA positions of Elbert and Klingensmith are documented in the materials

submitted. For purposes of this ruling, it assumed that the Appellant's statement that Board President Combs' children previously attended Woodrow Wilson Elementary School is accurate.

Disputed facts: The functionality of Emerson Hough as a school facility is not addressed within the facts set forth by the District in support of its motion. The Appellant alleges that a fact dispute exists regarding whether Emerson Hough was a superior facility to Woodrow Wilson. She points to the rankings assigned the building by the District Improvement Team and an opinion from Dr. George Chambers, which she plans to offer at hearing, as support for the allegation.

At paragraph 6 of the Appellant's Resistance Motion for Summary Judgment the Appellant cites to Dr. Chamber's Curriculum Vitae as support for the assertion that he has over four decades of experience in addressing school administration issues at the academic level, for districts across the state, for the University of Iowa, and for the Iowa General Assembly. The Statement of Further Disputed Material Facts does not include any allegations regarding Dr. Chamber's education or experience. His Curriculum Vitae is not included in the supporting documents submitted by the Appellant. An unsigned written statement captioned "Opinion of Dr. George A. Chambers" is included in the submitted documents.

In ruling on the District's Motion for Summary Judgment we must look at the facts in the light most favorable to the Appellant. The District challenges the materiality of Dr. Chamber's opinions, but not his expert qualifications. Therefore, for purposes of this ruling we assume that the Appellant can prove that Dr. Chamber's credentials are as represented in her memorandum.

In his statement Dr. Chambers is critical of the Newton Board's decision to realign elementary grades into two PK-3 and two 4-6 attendance centers and of their selection of Emerson Hough as the attendance center to close. He makes the following assertions regarding the selection of Emerson Hough:

1. The difference in cost savings between the two buildings is minimal.
2. When faced with a need to close an attendance facility and the choice of which building to close:
    a. "The choice criterion is: keep the most desirable and eliminate the least desirable building for education elementary Grade 4 through Grade 6."
    b. "The number of pupils residing in an attendance center should be of no significance in evaluating/comparing the worthiness, or lack thereof, of an educational facility.
3. In this case that criterion – number of students in building – "appears to have been applied and was a major and prime decision factor in selecting Woodrow Wilson over Emerson Hough.
4. That criterion is irrational and led to selecting the inferior building.

5. After evaluating the educational facility environment of Woodrow Wilson and Emerson Hough and assessing them on a 5-point scale (5 highest, 1 lowest), Chambers would award Woodrow Wilson a 1.5 to 1.75 and Emerson Hough a 3.75 or 4.0.
6. "The superiority of the Emerson Hough facility over the Woodrow Wilson facility from an education facility perspective to accommodate Grades 4, 5, and 6 is without question, in my opinion."
7. The decision to close Emerson Hough resulted in a significant and unnecessary forfeiture of classroom space, building value, and flexibility for accommodating future needs.
8. The facilities are not comparable. Emerson Hough is superior in every regard.

The District takes the position that the Appellant fails to present operative facts to support the opinions of the team and Dr. Chambers and that, given the abuse of discretion standard of review, even if a genuine issue of fact has been shown on this issue the relative quality of the two buildings is not material.

The consensus of the District Improvement Team was that Emerson Hough was a more functional building than Woodrow Wilson. A majority of district patron who completed survey forms following the February 20th bus tour of the schools also ranked Emerson Hough higher than Woodrow Wilson in terms of overall functionality. And Dr. Chambers is of the opinion that the Emerson Hough building was a superior educational facility when compared to the Woodrow Wilson building. Although very little fact-evidence was provided to support these opinions, when the information submitted in support and resistance to the motion is viewed in the light most favorable to the Appellant there is sufficient proof to generate a genuine question of fact regarding the relative quality of the two buildings.

Arguments of the parties: The District contends that it is entitled to summary judgment because the Appellant has failed to allege facts specific facts to establish that the Newton Board abused its discretion in making the decision to close Emerson Hough Elementary School.

The Appellant acknowledges that abuse of discretion is the proper standard for review of the Newton Board's decision, but asserts substantial evidence has been presented to generate fact questions as to whether the Board followed its own policies and acted unreasonably by ignoring substantial evidence supporting the closure of Woodrow Wilson rather than Emerson Hough.

Summary judgment: Summary judgment may be entered if the pleadings, submitted discovery, and affidavits show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Weddum v. Davenport Comm. Sch. Dist.*, 750 N.W.2d 114, 117 (Iowa 2008). The purpose of summary judgment is to avoid useless trials or hearings when the case can be decided as a legal matter. *Sorenson v. Shaklee Corp.*, 461 N.W.2d 324, 326 (Iowa 1990).

"When the only controversy concerns the legal consequences flowing from undisputed facts, summary judgment is the proper remedy." *Weddum v. Davenport Comm. Sch. Dist.*, 750 N.W.2d at 117.

Summary judgment, as provided in the Iowa Rules of Civil Procedure, is available in this administrative proceeding. 281 Iowa Administrative Code (IAC) 6.6(5); I. R. Civ. P. 1.981. There is nothing unique about the nature of a school closing decision which mandates an evidentiary hearing or alters the analysis to be used to resolve a summary judgment motion.

Initially, the burden rests with the movant to show that there is no genuine issue of material fact. When the movant satisfies the initial burden by filing a properly supported motion for summary judgment, the burden shifts to the party opposing the motion "who then must set forth specific facts showing that there is a genuine issue for trial." *James v. Swiss Valley Ag Service,* 449 N.W.2d 886, 888 (Iowa 1989), citing *Anderson v. Liberty Lobby, Inc.,* 447 U.S. 242, 250, 106 S.Ct. 2505, 2516, 91 L.Ed.2d 202, 213 (1986).

> A factual issue is material only if the dispute is over facts that might affect the outcome of the suit. The burden is on the party moving for summary judgment to prove the facts are undisputed. In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.

Kolarik v. Cory Int'l Corp., 721 N.W.2d 159, 162 (Iowa 2006) (citations omitted).

In ruling upon a motion for summary judgment the tribunal must examine the entire record before it and "determine whether such a genuine issue exists . . .." *Byker v. Rice,* 360 N.W.2d 572, 573 (Iowa 1984), citing *Daboll v. Hoden,* 222 N.W.2d 727, 731 (Iowa 1974). "A genuine issue of material fact is lacking when a reasonable jury or judge could conclude that no evidence entitles the nonmoving party to relief." *Mason v. Vision Iowa Bd.,* 700 N.W.2d 349, 352 (Iowa 2005), citing *Keokuk Junction R.R. v. IES Indus., Inc.,* 618 N.W.2d 352, 355 (Iowa 2000).

Standard of review: Iowa law expressly vests the board of directors of our public schools with broad discretion to determine the number and location of schools and to designate the particular school each child shall attend. *See* Iowa Code §§ 274.7 ("The affairs of each school corporation shall be conducted by a board of directors . . ."); 279.11 ("The board of directors shall determine the number of schools to be taught, divide the corporation into such districts and other divisions for school purposes as may be proper, [and] determine the particular school which each child shall attend, . . ."); 280.3(5) ("the board of directors of each public school district . . . shall establish and maintain attendance centers based upon the needs of the school age pupils enrolled in the school district . . ."); 297.1 ("The board of each school district may fix the site for each

schoolhouse . . .. In fixing such site, the board shall take into consideration the number of scholars residing in the various portions of the school district and the geographical location and convenience of any proposed site.").

Iowa Code chapter 290 authorizes the State Board of Education to hear appeals from the decisions of local school boards, but does not dictate the scope of the State Board's review. In 1977 the State Board recommended procedures to be followed by local school districts when contemplating the closing of a school. *See In re Norman Barker, et al.,* 1 D.P.I.App. Dec. 145 (1977). In 2003 the Barker-guidelines were codified by the State Board in administrative rule as 281 Iowa Administrative Code, chapter 19. For more than three decades, the State Board confined its review of the reasonableness of a school closing decision to determination of whether the local district board substantially complied with the procedure recommended in *Barker. Cf. In re Closing of Moore Elementary, et al.,* 24 D.o.E. App. Dec. 21, 32 (2006). In a 2009 the Iowa Supreme Court concluded that the Barker rules exceeded the scope of the State Board's authority and declared the rules void. *Wallace v. Iowa State Bd. of Education,* 770 N.W.2d 344, 347-49 (Iowa 2009).

The Court in *Wallace* held that the proper nature of the State Board's review of a local school board decision to close a school building "is for abuse of discretion." *Wallace v. Iowa State Bd. of Education,* 770 N.W.2d at 349, citing *Sioux City Community School Dist. v. Iowa Dep't. of Education,* 669 N.W.2d 563, 568 (Iowa 2003). "An abuse of discretion is synonymous with unreasonableness. Unreasonableness is defined as 'action in the face of evidence as to which there is no room for a difference of opinion among reasonable minds or not based on substantial evidence.' " *Burns v. Iowa Board of Nursing,* 528 N.W.2d, 602, 605 (Iowa 1995), citing *Frank v. Iowa Dep't of Transportation,* 386 N.W.2d 86, 97 (Iowa 1986).

> In applying the abuse of discretion standard, we look only to whether a reasonable person could have found sufficient evidence to come to the same conclusion as reached by the school district. In so doing, we will find a decision was unreasonable if it was not based upon substantial evidence or was based upon an erroneous application of the law. Neither we nor the Department may substitute our judgment for that of the school district.

Sioux City Community School Dist. v. Iowa Dep't. of Education, 669 N.W.2d at 569 (citations omitted).

The State Board's role on appeal from a local board school closing decision is not to act as a "super school board." If a local board decision is based upon substantial evidence, it must be upheld, even if the State Board does not believe the option chosen by the local board was the "best" available alternative.

Proof that reasonable minds could differ over a discretionary decision or proof that a reasonable person could have arrived at a different determination does not establish an abuse of discretion. Indeed, a finding that "reasonable minds could differ" over a

discretionary decision, concedes that there is evidence to support more than one outcome. *Sioux City Community School Dist. v. Iowa Dep't. of Education*, 669 N.W.2d at 569-70. In order to prevail the Appellant must prove that no reasonable person faced with the underlying facts and circumstances could have come to the same conclusion as the local school board.

Analysis: The Appellant does not dispute any of the District's evidence regarding the condition of its budget, enrollment trends, the reduction of state funding, or the need to identify cost-saving measures. Nor does the Appellant challenge the local board decision to change from 5 to 4 elementary attendance centers at the beginning of the 2010-2011 school year. The only aspect of the Newton Board decision called into question by the Appellant is the selection of Emerson Hough Elementary, rather than Woodrow Wilson Elementary, as the building which would no longer be used as an attendance center.

The Appellant contends that genuine issues of material fact exist regarding: (a) whether the Board ignored the recommendations of the District Improvement Team and the boundary and alignment subcommittee; (b) whether the Board ignored substantial evidence that Woodrow Wilson was the least functional building and that Emerson Hough is a superior facility that is as complete and adequate as it is possible to provide, while Woodrow Wilson is not; and (c) whether the decision of the Board is contrary to Local Board Policy 202.1 because it fails to represent the interest of the entire district, favors the interests of a limited group of school patrons (those connected to Woodrow Wilson), and was based upon the Board using the school for personal advantage of board members and their friends and supporters.

(a) *Allegation that the Board ignored recommendations:* The Appellant failed to present any proof that the District Improvement Team made a recommendation to the Board. The team's report lays out the pros and cons of various options considered by the team, but the report does not include a recommendation of what action the Board should take. No other evidence has been submitted to support this assertion.

The minutes of the March 22nd meeting of the Board prove that the Board did not accept all of the boundary and alignment subcommittee's recommendations. The subcommittee recommended that the Board move to a PK-3 / 4-6 elementary grade alignment and close one attendance center - Woodrow Wilson Elementary - effective in the fall of 2010. These recommendations were presented to the Board and the Board agreed with the recommendations to realign the grades and close one attendance center in the fall of 2010. By a 4 to 3 vote the Board opted to close Emerson Hough rather than Woodrow Wilson. The fact that the majority of the Board did not adopt all of the subcommittee's recommendations does not prove that the Board "ignored" the subcommittee recommendations. No proof other than the minutes documenting the subcommittee and Board actions was offered on this point.

No genuine issue of fact has been shown as to the first contention.

(b) *Allegation that the Board ignored evidence about quality of the buildings:* A genuine question of fact has been found regarding the relative quality of the Emerson Hough and Woodrow Wilson buildings. The question then becomes whether the relative quality of the two buildings a material fact in this case. If so, then summary judgment is not appropriate.

If the State Board's task was to decide which building should be closed, then a comparative study of the two buildings would have a potential impact on the outcome at hearing. But the task of the State Board is not to substitute its judgment for that of the local board. Under the abuse of discretion standard, the question on review is not whether the local board made the best possible decision under the circumstances or whether the State Board would have made the same decision. Rather, the question is whether any rational person could have come to the same decision as the local board.

A local school board when faced with the prospect of closing one of two attendance centers should consider the size, age, and quality of the buildings. But these are by no means the only relevant considerations. Many other factors, including: geographic location – where the buildings are located with respect to district boundaries and other buildings; student population and enrollment trends - where students are and will be located; implications for transportation; and prospects for alternate uses of the buildings which fit district needs, are also likely to impact a local board's determination.

In this case the Newton Board members were involved in the study of alternative boundary realignment and building use options for more than a year. They were provided with data addressing each of these factors and were informed of the opinions of District Improvement Team members and the public. In light of all of the available information, the board split 4 to 3 on the question of which attendance center to close.

Substantial evidence – including enrollment numbers and trends, the geographic location of the schools, and the potential for alternate use of the Emerson Hough building supports the local board decision to close that building. The building selected for closing may have been, by some measures, a better building. Some members of the public disagree with the decision and an outside expert is prepared to testify that he believes the Board focused on the wrong factors and made the wrong decision. None of this proof can negate the existence of substantial evidence supporting the local decision.

Even if the Appellant can prove that Emerson Hough is a better and more functional education facility than Woodrow Wilson she can not prevail at hearing. Therefore these contentions do not present a genuine issue of material fact.

(c) *Alleged violations of Board policy:* The Appellant asserts that the decision of the Board is contrary to Local Board Policy 202.1 because it fails to represent the interest of the entire district, favors the interests of a limited group of school patrons (those connected to Woodrow Wilson), and was based upon the Board using the school for personal advantage of board members and their friends and supporters. The only factual allegation offered to support these claims is the observation that 3 of the 4 board

members who voted to continue use of Woodrow Wilson as an attendance center had some direct connection to that school. Two served as officers of the Woodrow Wilson PTA (one was a past president and the other was current vice president of the organization) and a third Board member's children previously attended Woodrow Wilson.

The Appellant offers no evidence whatsoever to support a finding that any of these board members was improperly influenced by his ties to Woodrow Wilson. In the absence of such proof, the Appellant argues that the assertions of violation of local board policy are sufficient to generate a question of material fact for hearing. This is simply incorrect.

The party resisting a motion for summary judgment is entitled to every legitimate inference that can reasonably be deduced from the evidence presented, but the resisting party can not rely on mere conclusory allegations, rumor, speculation, or the hope that evidence to support a claim will be developed at hearing. *See James v. Swiss Valley Ag Service,* 449 N.W.2d 886, 887-88 (Iowa 1989); *Hlubeck v. Pelecky,* 701 N.W.2d 93, 96 (Iowa 2005); *Thornton v. Hubill, Inc.,* 571 N.W.2d 30, 32 (Iowa App. 1997); *Wemett v. Schueller,* 545 N.W.2d 1, 2-3 (Iowa App. 1995).

In the absence of evidence to the contrary, the presumption is that board members perform their duties as prescribed by law and policy. *See Liberty Consolidated School Dist. v. Schindler,* 246 Iowa 1060, 1066, 70 N.W.2d 544, 547-48 (1955). The fact that three of the Newton Board members had some connection to the Woodrow Wilson school community is not sufficient to negate the presumption that they followed board policy. Nor does the fact that the Appellants were dissatisfied with the Board decision prove that the Board members were not representing the interest of the entire district.

No genuine issue of material fact has supports the allegations of policy violation.

Conclusion: The Appellant is understandably disappointed by the Newton Board's decision to close Emerson Hough Elementary School. She no doubt sincerely believes that this was not the best decision for the District. But we may not substitute our judgment for that of the local board.

> Any district board of directors faced with the possibility of closing an attendance center must take into account what it considers to be in the best interest of the entire district. Only that locally elected board of directors can best determine whether the best interest of the entire district dictates that the desires of a segment of the school community must yield to the interest of the whole.

In re Closing Montour Elementary Building, 21 D.o.E. App. Dec. 120, 131-132 (2002), quoting *In re Debra Miller, et al.,* 13 D.o.E. App. Dec. 303, 323-324 (1996), citing *In re Edward J. Comiskey,* 2 D.P.I. App. Dec. 306, 309-310 (1981). This Board can not disturb the local board decision absent a showing of abuse of discretion by that board.

Upon detailed review of the proof submitted, we have found that no genuine issue of material fact has been shown to overcome the District's motion for summary judgment. This ruling renders moot all other pending motions and negates the need for hearing. The hearing previously scheduled for August 26 – 27, 2010 is hereby cancelled.

Decision

For the foregoing reasons, the District's Motion for Summary Judgment is GRANTED in its entirety and the decision made by the Board of Directors of the Newton Community School District on March 22, 2010 to close Emerson Hough Elementary School as a attendance center is AFFIRMED.

Christie J. Scase

August 19, 2010
Date

Christie J. Scase, J.D.
Administrative Law Judge

9-16-10
Date

Charles C. Edwards, Jr., Vice President
State Board of Education